

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE, et al.,

Federal Defendants.

No. 2:18-cv-1115-RSL

**FEDERAL DEFENDANTS'
NOTICE OF FILING
SUPPLEMENT TO
ADMINISTRATIVE RECORD
AND RESPONSE TO MARCH
19, 2019 ORDER**

NOTICE OF FILING

On March 19, 2019, this Court granted the Plaintiffs' Motion to Supplement the Administrative Record, Dkt. No. 132. *See* Dkt. No. 175. In its Order, the Court directed the Department of State, Secretary of State, Acting Deputy Assistant Secretary of Defense Trade Controls, and Director of Policy, Office of Defense Trade Controls Policy (collectively, "Federal Defendants") to supplement the administrative record to ensure that it includes: (1) "all materials considered, directly or indirectly, in making the decision to issue the July 27, 2018, temporary modification and letter . . . , regardless of whether the materials support or are contrary to the decision"; (2) "settlement-related communications and materials generated in *Defense Distributed v. U.S. Dep't of State*, C15-0372RP (W.D. Tex.)"; and (3) a "privilege log for all assertedly privileged documents and materials" that the Federal Defendants would otherwise have identified as part of the administrative record. In addition, the Court provided the Plaintiffs "leave to take discovery

aimed at establishing whether the pre-July 27, 2018, comments to the NPRMs were directly or indirectly considered when issuing the temporary modification and letter.”

The Federal Defendants hereby provide notice of the filing of materials to supplement the record. *See* Ex. 1. As explained in the certification and declaration attached thereto, the supplemental documents being filed, in conjunction with the accompanying privilege log and the administrative record previously supplied, form the complete record directed by the Court.

The Federal Defendants also conferred with Plaintiffs regarding the discovery authorized by the Court in its March 19, 2019 Order. These parties have agreed to the production of a declaration by an appropriate Department of State official that attests to “(1) whether the State Department, in issuing the temporary modification and letter, directly or indirectly considered public comments to the 2018 NPRMs, regardless of whether such comments supported the Department’s decision; and (2) the date(s) on which the public comments (or any of them) were downloaded or reviewed prior to the State Department’s issuance of the temporary modification and letter, and by whom.” The parties further agreed that this production would occur contemporaneously with the record supplementation. The Department has determined that this information can best be provided through a pair of declarations. The first, by the Acting Deputy Assistant Secretary of Defense Trade Controls, is attached as Exhibit 2. The second, by the Acting Co-Division Chief of the Technology and Jurisdictional Analysis Division, within the Directorate of Defense Trade Controls, is attached as Exhibit 3.

Dated: April 16, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2019, I electronically filed the foregoing notice using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: April 16, 2019

/s/ Stuart J. Robinson
Stuart J. Robinson